

LEGAL ANALYSIS OF THE SUBSTANCE OF INHERITANCE LAW (COMPARATIVE STUDY BETWEEN THE INDONESIAN CIVIL CODE AND THE DUTCH CIVIL CODE)

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ABSTRACT

The aims to study is to examine and analyze the inheritance distribution pattern regulated in the Indonesian Civil Code, the inheritance distribution pattern according to the Dutch NBW, the differences and similarities between the inheritance distribution pattern stated in the Civil Code and the Dutch NBW, and the preparation of teaching materials for "Inheritance Law". The inheritance law currently in force in Indonesia no longer follows the development of applicable laws worldwide. In contrast, in other countries, such as the provisions of inheritance law in the Netherlands, it has been stipulated in a new law called the Dutch NBW. Therefore, it is necessary to conduct a comparative study between Indonesian inheritance law and the Dutch NBW. The methods used are presented below. This type of research is normative legal research. The approaches used in this study are the statute and comparative approaches. The data sources come from library data, and the legal materials are primary, secondary, and tertiary. The data collection technique uses interviews and documentary studies. The data analysis uses qualitative analysis. The study results show that the heirs entitled to receive an inheritance in the Indonesian Civil Code are primarily legitimate children, illegitimate children, and the most extended surviving husband or wife. The heirs who are entitled to receive inheritance in the Dutch Civil Code consist of the husband/wife of the testator who is not separated according to law and his/her children, the parents of the testator with brothers and sisters, the grandparents of the testator; and the great-grandparents of the testator. The similarities between the heirs entitled to receive inheritance between the Indonesian Civil Code and the Dutch Civil Code are that legitimate children and husband/wife are entitled to receive inheritance.

Keywords: Inheritance Law, Indonesian Civil Code, Dutch Civil Code.

INTRODUCTION

The Civil Code, abbreviated as KUH Perdata, is a product of the Dutch East Indies government, enforced in Indonesia based on Article II of the Transitional Provisions of the 1945 Constitution. Article II of the AP of the 1945 Constitution reads: "All state bodies and existing regulations are still directly applicable as long as no new ones have been made according to this Constitution". The Civil Code means that the provisions that existed during the Dutch East

Indies era, especially the Civil Code, are still valid in Indonesia. The aim is to prevent a legal vacuum (*rechtvacuum*) in civil law.¹

The Civil Code enforced in Indonesia was established in 1848, while in the Netherlands, it was established in 1838. The Civil Code consists of four books: Book I on personal law, Book II on property law, Book III on contract law, and Book IV on evidence and expiration. Book II regulates inheritance. Inheritance is regulated in Articles 830 to 1149 of the Civil Code. These provisions regulate inheritance due to death, wills, gifts, etc.

The substance regulated in the Indonesian Civil Code is no longer under the legal developments in force in the Netherlands. In the Netherlands, the Civil Code was regulated in 1992. Its name is the New Civil Code (NBW). There are ten books in the NBW, one about inheritance. Inheritance is regulated in Book 4 entitled Law of Succession. Book 4 consists of

1. *general provisions*
2. *intestate succession*
3. *intestate succession in the relation between the spouse and the children of the deceased*
4. *the last will of the deceased*
5. *that wills of various types*
6. *consequences of a succession*

These six things need to be studied and analyzed in-depth, and we will later compare them with the substance regulated in the Indonesian Civil Code. This comparison will reveal, the differences and similarities between the two.

The purpose of this study is to determine and analyze:

1. inheritance distribution patterns regulated in the Indonesian Civil Code
2. inheritance distribution patterns according to the Dutch NBW
3. differences and similarities in inheritance distribution patterns between those stated in the Civil Code and the Dutch NBW.
4. Preparation of teaching materials for “Inheritance Law”.

METHOD

The type of research is normative legal research. The approaches used in this research are (1) statute approach, (2) conceptual approach, and (3) case approach. The data sources used in this research are library data. The data analysis uses qualitative analysis.

ANALYSIS AND DISCUSSION

1. Inheritance Distribution Patterns Regulated in the Indonesian Civil Code

The inheritance left by the testator has a significant meaning for the heirs because, with the inheritance, the heirs can continue the benefits of the inheritance. Each heir will receive a fair distribution among them. A fair distribution requires a fair inheritance distribution system. A fair inheritance distribution system is called an inheritance distribution pattern. The inheritance distribution pattern, which in English is called an inheritance distribution pattern, while in Dutch it is called *overserving distributiepatroon verdeling van de erfenis*, contains three elements, which include:

- a. Pattern
- b. Distribution
- c. inheritance

¹Salim HS, Pengantar Hukum Perdata Tertulis (BW), (Jakarta: Sinar Garfika, 2019), hlm. 12-13.

The pattern is conceptualized as a system or way of working. Distribution is conceptualized as

1. process, method, act of dividing or distributing;
2. calculation of dividing”.

Divide is conceptualized as

1. to break
2. to separate
3. to divide) into several (equal) parts
4. to solve (simplify) a number with a certain number
5. to break (something) and then give it to another party
6. to give (some) to another person.²

Of these various concepts, given to another party is the most appropriate idea for the word share. To provide means to hand over or convey to another party. Inheritance is conceptualized as property distributed to the testator’s leaves, who are heirs.

Thus, can say that the inheritance distribution pattern is conceptualized as follows:

“The system of handing over or giving inheritance among the heirs to the inheritance left by the testator”.

There are three elements listed in the definition above, which include:

1. its essence
2. its subject
3. its object

The essence of the inheritance distribution pattern is a system or method. The distribution system is by giving rights and portions to each heir. The amount of each portion has been determined by the laws and regulations, especially those stated in the Civil Code. The subjects who divide the inheritance are the heirs. The division of inheritance among the heirs must be discussed among them. However, if there is no agreement on the amount of the division, the services of a mediator or court can be used. The object of the division is the property left by the heir.

Legally, the heirs entitled to receive inheritance have been determined in a limitative manner. Limitation means limiting, and limiting means that the size of each heir’s share has been determined.

The heirs entitled to receive inheritance by law have been determined in Article 832 of the Civil Code. Persons entitled to become experts according to the law are:

1. blood relatives, whether legitimate or extramarital;
2. the husband or wife who lives the longest.

Heirs due to blood relations are reaffirmed in Article 852 of the Civil Code. Heirs due to blood relations are:

1. children;
2. all their descendants, either:
 - a. legitimate children;
 - b. illegitimate children.

Pitlo, based on his interpretation, divides the heirs according to the law into four groups, which include:

1. First group, consisting of:
 - a. husband;
 - b. husband/wife;

²Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia (KBBI) Kamus versi Online/Daring*, <https://www.kbbi.web.id>. Akses, tanggal 15 April 2023.

- c. his descendants;
2. second group, consisting of:
 - a. parent;
 - b. you;
 - c. sibling descent;
3. the third group, consisting of other ancestors;
4. The fourth group, consisting of other relatives in the divergent line up to the sixth degree.³

If the first group still exists, then the next group does not get anything from the inheritance of the testator. If all groups of heirs do not exist, then all the assets inherited from the deceased become the property. The state is obliged to pay off the deceased's debts as long as the assets for this are sufficient.

The heir who dies is usually one of the husband or wife. A husband is a man who is the official life partner of a woman (wife). The husband and wife are a married man and woman. If the husband dies first, then those entitled to become experts are:

1. children or descendants and
2. his wife.

The descendants are the children and grandchildren of the deceased. Children can be classified into three types, which include:

1. legitimate child;
2. outside children; And
3. child of adultery.

Legitimate children are children born in marriage and as a result of marriage. The portion of inheritance obtained by children or their descendants is determined in Article 852 of the Civil Code. Article 852 of the Civil Code, which states that:

“Children or descendants, even if born and various marriages, inherit the inheritance of their parents, their grandparents, or their blood relatives in a straight line upwards, without distinguishing between gender or previous birth. They inherit equal portions head by head, if they are all related to the deceased in the first degree and each has the right for himself; they inherit stake by stake, if they all inherit in part as a substitute”.

There are four things listed in Article 852 of the Civil Code, which include:

1. first class heirs;
2. their objects;
3. their rights; and
4. their parts;

The first class heirs in this provision are:

1. children; or
2. their descendants.

The descendants are not distinguished between births from the first or second marriage. The objects inherited by children or descendants are the inheritance of:

1. their parents;
2. their grandparents; or
3. their blood relatives in a straight line upwards.

Children or descendants without:

1. distinguishing gender; or
2. earlier birth.

³Pitlo, *Op. Cit.*, hlm. 41.

The portion of each child or descendant is the same between each other. For example, the inheritance is Rp500 million, while the heirs are five, consisting of 2 (two) men and three women and each heir gets the same portion, namely Rp100 million.

An illegitimate child is born from an illegitimate marriage, but the father recognizes the child. The rights of an illegitimate child recognized as legitimate by the father or mother are not the same as those of a legitimate child. The rights of an illegitimate child who is recognized as legitimate are regulated in Article 862 of the Civil Code. These rights are presented below.

- a. If the testator leaves legitimate descendants or a husband or wife, then the portion of the illegitimate child is 1/3 of what would have been received if they were legitimate children.
- b. If the testator does not leave descendants or a husband or wife but leaves a family of equal rank in the ascending line or brothers and sisters or their descendants, the illegitimate child receives 1/2 of the inheritance.
- c. If the testator only leaves children of siblings in a more distant degree, then the portion of the illegitimate child is 1/4.
- d. If the testator does not leave other heirs, the illegitimate child receives the entire inheritance.
- e. If one of the blood relatives dies without dying, exclude relatives in degrees that allow inheritance or the husband or wife who lives the longest, then illegitimate children have the right to claim the entire inheritance to the exclusion of the state.

Both provisions regulate the rights of illegitimate children. However, Article 866, Article 870, and Article 871 of the Civil Code regulate inheritance left by illegitimate children. The distribution of inheritance of illegitimate children is stated as follows.

- a. If an illegitimate child dies first, then all children and legitimate descendants are entitled to receive inheritance from the testator.⁴
- b. If an illegitimate child dies without leaving any descendants or husband or wife, then the one entitled to receive the inheritance is the father or mother who acknowledges him, and each receives 1/2 part.⁵
- c. If an illegitimate child dies without leaving any descendants or husband or wife, while the parent who acknowledges him has died first, the goods previously inherited from the parent are handed over to the legitimate descendants of the father or mother who believes him.⁶
- d. If an illegitimate child dies without leaving a husband or wife, father or mother who acknowledges him or her, or brothers or sisters or their descendants, without regard to the State, the inheritance is inherited by the closest blood relatives of the father or mother who acknowledges him. The note states that the family rights from the father's or mother's line are 1/2 each.⁷

The second group of heirs who are entitled to receive inheritance consists of:

1. father;
2. mother;
3. brother;
4. sister

This second group of heirs does not automatically receive the inheritance from the heir, but there are conditions. The conditions for the heir to receive the inheritance, if the heir does not leave behind:

- a. descendants;
- b. husband;
- c. wife.

Meanwhile, those who are still alive the longest are:

⁴Pasal 866 KUH Perdata.

⁵Pasal 870 KUH Perdata.

⁶Pasal 871 KUH Perdata.

⁷Pasal 871 KUH Perdata.

- a. father and mother;
- b. brothers and sisters.

The portion of the still-alive father and mother receives 1/3 of the inheritance, while the brothers and sisters receive 1/3. Article 855 of the Civil Code also determines the portion of the father or mother who lives the longest. Their portion depends on the quantity of the testator's brothers or sisters. The portion is presented below.

- a. If the testator leaves one brother and one sister, then the right of the father or mother who lives the longest is 1/2.
- b. If the testator leaves two brothers and sisters, then the right of the father and mother who, lives the longest, is 1/3.
- c. If the testator leaves more than two brothers and sisters, then the right of the father or mother who lives the longest is 1/4;

The remainder of the inheritance becomes the right of the heir's brothers and sisters. The shares of brothers and sisters are equal between them. The shares of brothers and sisters are further determined in Article 856 of the Civil Code. If the heir does not leave any descendants, husband or wife, and the father or mother has died first, then the person who has the right to receive all the inheritance from the heir is the right of:

- a. brother; And
- b. sister.

2. Inheritance Distribution Pattern According to the Dutch NBW

The new Dutch Civil Code, abbreviated as Dutch NBW, which came into force on September 19, 2018, is an amendment to the Dutch Civil Code enacted in 1838. The Dutch NBW consists of ten books, which include:

1. **Book 1** *natural person and family law*;
2. **Book 2** *legal persons*;
3. **Book 3** *property law in general*;
4. **Book 4** *law of succession*;
5. **Book 5** *real property right*;
6. **Book 6** *obligations and contracts*
7. **Book 7** *particular contracts*;
8. **Book 8** *transport law and means of transport*;
9. **Book 9** *intellectual property*; **dan**
10. **Book 10** *international privat law*.

Only Book 4 law of succession will be analyzed of the ten books. Book IV consists of six chapters and 233 articles, from Article 1 to Article 233 of the Dutch NBW.

The main principle of Dutch inheritance law is related to the inheritance left by the testator. The person who leaves the inheritance is the testator or the person who bequeaths. Meanwhile, the person who receives the inheritance is called the heir. Heirs can be divided into two types, which include:

1. not eligible to be heirs; and
2. those who are entitled to be heirs.

Five groups of people are not eligible to be heirs, which include:

1. people who have been convicted of:
 - a. killing the testator;
 - b. attempting to kill him; or
 - c. participating in the murder;

2. someone who has been convicted of committing a crime that was committed intentionally against the testator; The sentence is a maximum imprisonment of four years;
3. someone who, in a court decision, has been determined that he has slandered the testator for committing a crime. The sentence imposed by the court is a maximum imprisonment of four years;
4. people who have committed physical acts or threats have forced the testator to:
 - a. make a will; or
 - b. prevent the testator from making a will;
5. a person who has stolen, hidden, destroyed, or falsified the testator's last will.⁸

Even though the person is not worthy of receiving the inheritance, if the heir forgives his evil deeds, the person concerned is entitled to receive the inheritance.⁹ Meanwhile, the rights of third parties who have acquired property in good faith must be respected.

There are two ways for heirs to obtain property from the testator, which include:

1. inheritance;

2. will.¹⁰

Inheritance is conceptualized as something inherited, such as property, good name, or inheritance.¹¹ Those entitled to be heirs in Dutch inheritance law or Dutch NBW have been determined in Article 10 paragraph (1) of Book 4 of the Dutch NBW. Those who are entitled to be heirs in this article are:

1. the husband/wife of the testator who is not separated according to law and their children;
2. the testator's parents with brothers and sisters;
3. the testator's grandparents; and
4. the testator's great-grandparents.

Even though the article stipulates that four groups of heirs are entitled to receive inheritance, not all of these groups can become heirs simultaneously. If the first group of heirs, is still alive, the second group, up to the fourth group of heirs are not entitled to receive the inheritance. However, if the heir does not leave behind a wife or husband and children, then the rightful heirs are:

1. the testator's parents; And
2. his brothers, either:
 - a. man; nor
 - b. Woman.

If the first and second group do not exist, the third group is entitled to receive the inheritance, which includes the testator's grandparents.

The shares received by the heirs of the first group are the same in size among the heirs. Included in the first group of heirs are:

1. surviving husband/or wife;
2. his children.

The share of legitimate children is half or 1/2 of the value of the heir's assets divided by the number of people left behind by the heir. For example, if the heir leaves behind five children and one wife, then the share received by each heir will receive 1/6 of the assets left by the heir.¹²

Meanwhile, another part regulated in the Dutch NBW is the will. Grammatically, a will is conceptualized as:

⁸Pasal 3 ayat (1) NBW Belanda.

⁹Pasal 3 ayat (3) NBW Belanda.

¹⁰Pasal 1 ayat (1) NBW Belanda.

¹¹Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia (KBBI) Kamus Versi Online/Daring*, <https://www.kbbi.web.id>. Akses, tanggal 27 April 2023.

¹²A Pitlo, *Hukum Waris Menurut KUH Perdata Belanda*, alih bahasa M. Isa Arief, (Jakarta: Intermedia, 1986), hlm. 43.

“The last message delivered by a person who is about to die (usually regarding wealth and so on)”.¹³

Wills are divided into three types, which include:

1. private will; and
2. legal will; and
3. secret will.¹⁴

A private will is also called an holographic will. The olographic is a will made by the testator’s hand and then signed.¹⁵

A legal will is a testament made before a notary and announced after the maker dies. A secret will is a will that is placed in a closed cover and kept by a notary (confirmed in the form of a deed witnessed by four people).

The requirement for a will to be made must be done freely by the testator and must not be contrary to sound morality and public order. A will that is contrary to this is null and void. Likewise, if the motive for making a will is contrary to sound morality and public order, it is null and void. Void by law means that the will is invalid or does not apply from the beginning. Meanwhile, people who are competent to make a will are:

1. legally competent;
2. minors not yet sixteen years old;
3. those who are placed under guardianship for reasons other than their physical or mental condition.¹⁶

3. Differences and Similarities in Inheritance Distribution Patterns between those stated in the Civil Code and the Dutch NBW

The Indonesian Civil Code, abbreviated as KUH Perdata, has a very close relationship with the Dutch Civil Code, especially the Dutch Civil Code which was established in 1838, this is because the Dutch Civil Code was enforced in Indonesia based on the principle of concordance. This means that the Dutch Civil Code was enforced in Indonesia because at that time Indonesia was a Dutch colony. So that all legal provisions applicable in the Netherlands were also enforced in its colony, namely Indonesia. The Civil Code was established in 1848.

The Indonesian Civil Code which was established in 1848 is still valid in Indonesia until now (2023), this is because the national Civil Code has not been established. To prevent a legal vacuum, the Indonesian Government still enforces these provisions, this is stated in Article II of the AP of the 1945 Constitution, which states that:

”All state bodies and existing regulations are still directly valid as long as no new

This means that the provisions that existed during the Dutch East Indies era, especially civil law, still apply in Indonesia. The aim is to prevent a legal vacuum (*rechtvacuum*), in the field of civil law. There are four books listed in the Indonesian Civil Code, one of which is Book II of the Civil Code. Book II of the Civil Code regulates property law. There are two things regulated in property law, which include property rights and inheritance law. Why is inheritance law included in Book II of the Civil Code?

Historically, the formation of the Civil Code in the Netherlands, views inheritance law as a property right to the goods of deceased persons. However, this view is considered inappropriate, because:

¹³Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia (KBBI) Kamus Versi Online/Daring*, <https://www.kbbi.web.id>. Akses, tanggal 27 April 2023.

¹⁴*Ibid.*

¹⁵Pitlo, *Op. Cit.*, hlm. 171.

¹⁶Pasal 55 ayat (1) NBW Belanda

1. heirs continue the rights and obligations that are all the property of the person who left the inheritance (Heir);
2. heirs do not obtain separate and new property rights;
3. heirs also continue the other rights and obligations of
4. the deceased person (heir).¹⁷

The rights of the heir are in the form of receivables or something that should have been received by the heir during his lifetime. However, the receivables have not been received from the debtor because he died. The obligations of the heir are in the form of debts that should have been paid by the heir during his lifetime. In addition, the things that must be done by the heir are to bear the costs of burial and things related to it.

One of the legal substances of inheritance stated in the Indonesian Civil Code is about inheritance. Those who are entitled to receive inheritance in the Indonesian Civil Code consist of:

1. the first group, consisting of:
 - a. husband;
 - b. husband/wife; and
 - c. their descendants;
2. the second group, consisting of:
 - a. parents;
 - b. siblings; and
 - c. siblings' descendants;
3. the third group, consisting of other ancestors;
4. the fourth group, consisting of other relatives in a divergent line up to the sixth degree.¹⁸

If the first group still exists, then the next group does not get anything from the inheritance of the testator. If all groups of heirs do not exist, then all the assets inherited from the deceased become the property of the State. The state is obliged to pay off the debts of the deceased as long as the assets for this are sufficient.

Meanwhile, in the Netherlands, the provisions on the Civil Code have been changed and stipulated by a new law. The name of the law is the Dutch NBW, which came into effect on September 19, 2018, which is an amendment to the Dutch Civil Code which was stipulated in 1838. The Dutch NBW consists of ten books. One of the books is about inheritance law. Inheritance law is regulated in book IV. Those who are entitled to be heirs in Book IV are:

1. the husband/wife of the testator who is not separated according to law and their children;
2. the testator's parents with brothers and sisters;
3. the testator's grandparents; and
4. the testator's great-grandparents.

If we pay attention to the study above, then the Indonesian Civil Code and the Dutch NBW differ in terms of their regulations. In Indonesia, the law of inheritance is regulated in Book II of the Civil Code, while the Dutch inheritance law is regulated in Book IV of the Dutch NBW. Meanwhile, what is the same is the classification of heirs who are entitled to receive inheritance. Heirs who receive inheritance, both in the Indonesian Civil Code and the Dutch NBW consist of four groups, as presented above.

CONCLUISON

¹⁷Van Apeldorn, *Pengantar Ilmu Hukum*. (Jakarta: Pradnya Paramita, 1985), hlm.238.

¹⁸Pitlo, *Op. Cit*, hlm. 41.

The conclusion that can be drawn is that the heirs who are entitled to receive inheritance in the Indonesian Civil Code are primarily legitimate children and illegitimate children, and the longest surviving husband or wife. The heirs who are entitled to receive inheritance in the Dutch Civil Code consist of: the husband/wife of the testator who is not separated according to law and his/her children, the parents of the testator with brothers and sisters, the grandparents of the testator; and the great-grandparents of the testator. The similarities between the heirs who are entitled to receive inheritance between the Indonesian Civil Code and the Dutch Civil Code are that legitimate children and husband/wife are entitled to receive inheritance. **It is hoped that the DPR and the Government can establish national inheritance laws, the substance of which refers to religious norms, customs, and those contained in the laws of other countries.**

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Law

Kitab Undang-Undang Hukum Perdata Indonesia.

Kitab Undang-Undang Hukum Belanda Baru.

Kompilasi Hukum Islam.

